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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Yuba)

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THE PEOPLE,  
  
Plaintiff and Respondent,  
  
v.  
  
THERON KENNETH HOLSTON,  
  
Defendant and Appellant.

C063836  
  
(Super. Ct. No.  
CRF09367)

Defendant Theron Kenneth Holston pleaded no contest to petty theft with a prior and admitted two prior prison terms in exchange for a maximum prison sentence of five years and dismissal of a remaining charge and additional prison prior allegations. The trial court sentenced him to five years in state prison, imposed specified fees and fines, and awarded 205 days of presentence custody credit.

On appeal, defendant contends he is entitled to additional presentence custody credits pursuant to amended Penal Code section 4019 despite his status as a sex offender registrant (Pen. Code, § 290; undesignated statutory section references

that follow are to the Penal Code), and that any exclusion from the benefit of increased credits under that section violates his right to equal protection. We affirm the judgment.

## FACTS AND PROCEEDINGS

A detailed recitation of the facts underlying defendant's current conviction is unnecessary for resolution of this appeal. Briefly summarized the facts are as follows:

Defendant was arrested after he shoplifted items from a convenience store and assaulted the store clerk before leaving the scene.

As noted, defendant pleaded no contest to petty theft with a prior (§ 666) and admitted a prior theft-related conviction and two prior prison terms (§ 667.5, subd. (b)) in exchange for a stipulated five-year prison sentence and dismissal of all remaining counts and enhancements.

The court denied probation and sentenced defendant to five years in state prison pursuant to the negotiated plea. The court imposed specified fees and fines, and awarded defendant 137 days of actual custody credit plus 68 conduct credits for a total of 205 days of presentence custody credit. Defendant filed a timely notice of appeal.

## DISCUSSION

### *Section 4019 Credits*

Defendant contends that the recent amendments to section 4019 should apply to his appeal.

The recent amendments to section 4019 do not operate to modify defendant's entitlement to credit, as he was required to register as a sex offender pursuant to section 290. (§§ 2933.1, subd. (a), 4019, subds. (b)(2), (c)(2) & (f); Stats. 2009, 3d Ex. Sess., ch. 28, § 50.)

Defendant argues his status as a sex offender registrant does not preclude him from the additional custody credits afforded by amended section 4019 because that statute only prohibits persons ordered to register as a sex offender "in their current case." We disagree with defendant's distorted interpretation of the statute.

"In construing a statute, our role is to ascertain the Legislature's intent so as to effectuate the purpose of the law. [Citation.] In determining intent, we must look first to the words of the statute because they are the most reliable indicator of legislative intent. [Citation.] If the statutory language is clear and unambiguous, the plain meaning of the statute governs." (*People v. Lopez* (2003) 31 Cal.4th 1051, 1056.)

By the plain meaning of section 4019, a defendant is prohibited from receiving additional custody credits if he "*is* required to register as a sex offender." (§ 4019, subd. (b)(2), *italics added*.) The statute does not contain any language limiting that category of defendants to persons whose registration requirement arises out of the current offense. Defendant concedes that he is required to register as a sex offender under section 290 as a result of his 2001 conviction

for violating section 314. Any person who is subject to section 290 is required to register "for the rest of his or her life" while residing in, attending school in, or working in California. (§ 290, subd. (b).) As such, at any given time during a section 290 registrant's lifetime, that registrant *is* required to register. Defendant's lifetime registration status places him squarely within the constraints of section 4019, subdivision (b)(2), exempting him from receiving additional credits. Because the language of section 4019 is clear and unambiguous, we reject defendant's suggestion that the language is susceptible to any other reasonable interpretation.

Defendant next argues that section 4019 violates the equal protection guarantees of the federal and state constitutions to persons who are "similarly situated." Using his previous argument as a foundation, he suggests that the similarly situated groups are: "(1) current offenders who have no current offense that triggers section 290 registration and who have no prior offense that triggers registrations; and (2) current offenders who have no current offense that triggers section 290 registration, but who have a prior offense that triggers registration."

Having already rejected defendant's argument that the statutory exemption applies only to those whose registration status is decided in the current proceeding, the foundation of this argument fails as well. In fact, in the context of this appeal, there are only two groups to compare, those who do not have to register and those who do. Members of those two groups

are not "similarly situated" because one has the status of having been convicted of a sex offense requiring registration and one has not. Absent a similar situation, there can be no violation of the constitutional right of equal protection.

Moreover, even if a viable argument could be patched together that would force a finding that the two groups are similarly situated, we could easily decide that the Legislature had a rational basis for treating the two groups differently in that those convicted of sexual offenses have committed more serious crimes than those who have not and that the sexual offender is thus less deserving of additional conduct credits. There is no violation of the right of equal protection here.

#### DISPOSITION

The judgment is affirmed.

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HULL, J.

We concur:

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SCOTLAND, P. J.

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CANTIL-SAKAUYE, J.